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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,800	11/24/2003	Donna K. Hodges	BS030349	5440

7590 01/26/2007	EXAMINER
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ART UNIT	PAPER NUMBER
2109	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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PTOL-90A (Rev. 10/06)

		Application No.	Applicant(s)
☒	**Office Action Summary**	10/720,800	HODGES ET AL.
		Examiner	Art Unit	
		Anish Sikri	2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _24 November 2003_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-16_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-16_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _24 November 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _3/8/2004_.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

The application numbers in the specification in paragraphs [0002] – [0008]

(i.e., XX/XXX,XXX) are objected as the specification does not mention any numbers.

The application numbers need to be provided.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a
foreign country or in public use or on sale in this country, more than one year
prior to the date of application for patent in the United States.

Claims 1 to 16 rejected under 35 U.S.C. 102(b) as being anticipated by Kato

(US 2002/0112060 A1).

Consider Claim 1, Kato clearly discloses the <u>method comprising the steps of:</u>

<u>Receiving a request for data, the request for data originating from a client</u>

<u>communication device</u> (Kato, Page 2, paragraph [0022]). It shows the unit requests the

path information for the transfer route from the nodes.

Kato also discloses the <u>step of assessing in real-time an availability of network</u>

<u>routing to fulfill the request</u> (Kato, Page 5, paragraph [0073]). It shows the network

availability based on predetermined conditions and the network congestion state. It

sends out congestion avoiding packet and having a program to reduce its congestion

state. This allows it to determine the real-time availability of the network.

Kato also discloses the step of <u>assessing in real-time an availability of network</u>

<u>bandwidth to fulfill the request</u> (Kato, Page 11, paragraph [0187]). Kato shows the

assessment of real-time network availability with the use of QOS. It allows it to monitor

the QOS queue table, bandwidth, amount of transmission, delay in passage of packets

etc.

Kato also discloses the <u>step of ascertaining a preferred scenario of</u>

<u>segmentation, dispersion, and assemblage of electronic data to fulfill the request</u> (Kato,

Page 23, paragraph [0356]). It shows that the packets are made up of plurality of

packets, and it combines two or more packets to become as one single packet and it

also can divide a single packet into plurality of packets to send the divided packets out.

Kato also discloses the <u>step of communicating to the client communications</u>

<u>device the electronic data fulfilling the request, the electronic data formatted according</u>

<u>to the preferred scenario</u> (Kato, Page 12, paragraph [0197]). It shows by sending out a

completion signal and receiving a notification of receipt of packet transfers to indicate

the fulfillment of electronic data.

Consider Claim 2, Kato clearly discloses <u>the step of reserving a routing within</u>

<u>a network, the reserved routing identified in the preferred scenario.</u> (Kato, Page 33,

claim 4). It shows the unit gathers route information before transmitting signals.

Consider Claim 3, Kato clearly discloses the steps which show the unit receiving

<u>a first data stream at a computer, the first data stream comprising packets of data</u>

<u>packetized according to a packet protocol; segmenting the first data stream into</u>

<u>segments according to a Service Level Agreement, the Service Level Agreement being</u>

an agreement defining parameters for communications service for the subscriber;

dispersing at least one segment via a network for a subsequent processing service;

receiving a result of the processing service; assembling a second data stream, the

second data stream comprising at least one of i) the result of the processing service and

ii) another segment; and communicating the second data stream via the network.

(Kato, Page 4, paragraphs [0067], [0068], [0069]).

Consider Claim 4, Kato clearly shows the step of providing an assertion to a

communications service provider, the assertion indicating that the Service Level

Agreement was satisfied (Kato, Page 35, claim 44). It shows by having a program to

manage said SLA processing and check as to whether predetermined service is

maintained in accordance with said SLA already agreed in advance between said

network manager and a user.

Consider Claim 5, Kato clearly shows the method in which the assertion is

certified to reduce the incidence of fraudulent assertions (Kato, Page 25-26, paragraph

[0407]). Kato shows one type of scenario, as there could many types of scenarios

related to the invention, which can be used to reduce fraudulent assertions by collecting

quality of data by the device and the SLA.

Consider Claim 6, Kato clearly shows the method in which the assertion is

provided by the subscriber (Kato, Page 25-26, paragraph [0407]).

Consider Claim 7, Kato clearly shows <u>the method in which the step of assessing</u> <u>in real-time an availability of network routing to meet the Service Level Agreement</u> (Kato, Page 35, claim 45, claim 46 and Page 5, paragraphs [0083-0084]).

Consider Claim 8, Kato clearly shows <u>the method in which the step of assessing</u> <u>in real-time an availability of network bandwidth to meet the Service Level Agreement</u> (Kato, Page 35, claim 50 and claim 51).

Consider Claim 9, Kato clearly shows the method in which the step of receiving a request for data, the request for data originating from a client communications device, and wherein second data stream fulfills the request for the data (Kato, Page 4, paragraphs [0067], [0068], [0069]).

Consider Claim 10, Kato clearly shows the method in which the step of communicating the second data stream to a client communications device (Kato, Page 4, paragraphs [0067], [0068], [0069]).

Consider Claim 11, Kato clearly shows the method in which the step of assembling the second data stream comprises assembling the second data stream according to the Service Level Agreement (Kato, Page 35, claim 46).

Consider Claim 12, Kato clearly shows the method in which <u>the step of</u>

<u>communicating the second data stream comprises communicating the second data</u>

<u>stream according to the Service Level Agreement</u> (Kato, Page 35, claim 46).

Consider Claim 13, Kato clearly shows the method in which <u>the step of</u>

<u>processing a segment according to the Service Level Agreement</u> (Kato, Page 35, claim

46).

Consider Claim 14, Kato clearly shows the method in which <u>the step of</u>

<u>ascertaining a preferred scenario of segmentation, dispersion, and assemblage of</u>

<u>electronic data</u> (Kato, Page 35, claim 46, and Page 12, paragraph [0197]).

Consider Claim 15, Kato clearly shows <u>the system, comprising: a Analysis</u>

<u>Module stored in a memory device, the Analysis Module receiving a first data stream at</u>

<u>a computer, the first data stream comprising packets of data packetized according to a</u>

<u>packet protocol, the Analysis Module segmenting the first data stream into segments</u>

<u>according to a Service Level Agreement, the Service Level Agreement being an</u>

<u>agreement defining parameters for communications service for the subscriber, the</u>

<u>Analysis Module dispersing at least one segment via a network for a subsequent</u>

<u>processing service, the Analysis Module receiving a result of the processing service, the</u>

<u>Analysis Module assembling a second data stream, the second data stream comprising</u>

<u>at least one of i) the result of the processing service and ii) another segment, the</u>

Analysis Module communicating the second data stream via the network; and a

processor communicating with the memory device (Kato, Page 2, paragraph [0022],

Page 5, paragraph [0073], Page 11, paragraph [0187] and Page 4, paragraphs [0067],

[0067], [0068]).

Consider Claim 16, Kato clearly shows that it is a computer program product,

comprising: a computer-readable medium; and a Analysis Module stored on the

computer-readable medium, the Analysis Module receiving a first data stream at a

computer, the first data stream comprising packets of data packetized according to a

packet protocol, the Analysis Module segmenting the first data stream into segments

according to a Service Level Agreement, the Service Level Agreement being an

agreement defining parameters for communications service for the subscriber, the

Analysis Module dispersing at least one segment via a network for a subsequent

processing service, the Analysis Module receiving a result of the processing service, the

Analysis Module assembling a second data stream, the second data stream comprising

at least one of i) the result of the processing service and ii) another segment, the

Analysis Module communicating the second data stream via the network (Kato, Page 2,

paragraph [0022], Page 5, paragraph [0073], Page 11, paragraph [0187] and Page 4,

paragraphs [0067], [0067], [0068]).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 provisionally rejected on the ground of nonstatutory double patenting over **Claim 1** of copending Application No.**10/720587**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The **claim 1** of **10/720800** recites a <u>method of providing communications services, comprising the steps of: receiving a request for data, the request for data originating from a client communications device; assessing in real-time an availability of network routing to fulfill the request; assessing in real-time an availability of network bandwidth to fulfill the request; ascertaining a preferred scenario of segmentation, dispersion, and assemblage of electronic data to fulfill the request; and communicating to the client communications device the electronic data fulfilling the request, the electronic data formatted according to the preferred scenario</u>. And the **Claim 1** of copending application No. **10/720587** recites <u>a method of providing communications services, comprising the steps of: receiving a request for communications service, the request for communications service originating from a client communications device associated with a user, the request for communications service requesting communications service from a service provider; dynamically assessing in real-time an availability of at least one of i) a communications network operated by the service provider and ii) another communications network operated by another service provider; ascertaining a best-value scenario of segmentation, dispersion, assemblage, and routing of electronic data to fulfill the request, the best-value scenario maximizing</u>

profitability for the service provider; and providing the communications service to fulfill the request, the communications service provided according to the best-value scenario.

In comparison of both the claims, one can see that **claim 1** of **10/720,800** is a broader version of **claim 1** of **10/720,586**. Since, Omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. In re KARLSON (CCPA) 136 USPQ 184 (1963), the claims are not patentably distinct.

Claim 3 provisionally rejected on the ground of nonstatutory double patenting over **Claim 1** of copending Application No. **10/720586**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The **claim 3** of **10/720800** recites a method of providing communications services, comprising the steps of: receiving a first data stream at a computer, the first data stream comprising packets of data packetized according to a packet protocol; segmenting the first data stream into segments according to a Service Level Agreement, the Service Level Agreement being an agreement defining parameters for communications service for the subscriber; dispersing at least one segment via a network for a subsequent processing service; receiving a result of the processing service; assembling a second data stream, the second data stream comprising at least one of i) the result of the processing service and ii) another segment; and communicating the second data stream via the network. And the **Claim 1** of copending Application No. **10/720586** recites a method of providing communications services,

comprising the steps of: receiving a first data stream at a computer, the first data stream comprising packets of data packetized according to a packet protocol; segmenting the first data stream into segments according to a set of subscriber-specified rules stored in memory, the set of subscriber-specified rules specified by a subscriber to a subscription service, the set of subscriber-specified rules specifying how electronic data is formatted for the subscriber; dispersing at least one segment via a network for a subsequent processing service; receiving a result of the processing service; assembling a second data stream, the second data stream comprising at least one of i) the result of the processing service and ii) another segment; and communicating the second data stream via the network.

In comparison of both the claims, the subscriber-specified rules specified by a subscriber to a subscription service are stated in the SLA. One can see that **claim 3** of **10/720,800** is a broader version of **claim 1** of **10/720,586**. Since, Omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. In re KARLSON (CCPA) 136 USPQ 184 (1963), the claims are not patentably distinct.

Claim 15 provisionally rejected on the ground of nonstatutory double patenting over **Claim 11** of copending Application No. **10/720586**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The **claim 15** of <u>10/720800</u> recites a system <u>which comprises of a Analysis</u>

<u>Module stored in a memory device, the Analysis Module receiving a first data stream at</u>

<u>a computer, the first data stream comprising packets of data packetized according to a</u>

<u>packet protocol, the Analysis Module segmenting the first data stream into segments</u>

<u>according to a Service Level Agreement, the Service Level Agreement being an</u>

<u>agreement defining parameters for communications service for the subscriber, the</u>

<u>Analysis Module dispersing at least one segment via a network for a subsequent</u>

<u>processing service, the Analysis Module receiving a result of the processing service, the</u>

<u>Analysis Module assembling a second data stream, the second data stream comprising</u>

<u>at least one of i) the result of the processing service and ii) another segment, the</u>

<u>Analysis Module communicating the second data stream via the network; and a</u>

<u>processor communicating with the memory device</u>. And the **Claim 11** of copending

Application No. **10/720586** recites a <u>system which comprises of a Analysis module</u>

<u>stored in a memory device, the Analysis module receiving a first data stream at a</u>

<u>computer, the first data stream comprising packets of data packetized according to a</u>

<u>packet protocol, the Analysis module segmenting the first data stream into segments</u>

<u>according to a set of subscriber-specified rules stored in memory, the set of subscriber-</u>

<u>specified rules specified by a subscriber to a subscription service, the set of subscriber-</u>

<u>specified rules specifying how electronic data is formatted for the subscriber, the</u>

<u>Analysis module dispersing at least one segment via a network for a subsequent</u>

<u>processing service, the Analysis module receiving a result of the processing service, the</u>

<u>Analysis module assembling a second data stream, the second data stream comprising</u>

at least one of i) the result of the processing service and ii) another segment, the

Analysis module communicating the second data stream via the network; and a

processor communicating with the memory device.

In comparison of both the claims, the subscriber-specified rules specified by a

subscriber to a subscription service are stated in the SLA. One can see that **claim 15**

of **10/720,800** is a broader version of **claim 11** of **10/720,586.** Since, Omission of an

element and its function in a combination is an obvious expedient if the remaining

elements perform the same functions as before. In re KARLSON (CCPA) 136 USPQ

184 (1963), the claims are not patentably distinct.

Claim 16 provisionally rejected on the ground of nonstatutory double

patenting over **Claim 12** of copending Application No.**10/720586**. This is a provisional

double patenting rejection since the conflicting claims have not yet been patented.

The **claim 16** of **10/720800** recites a computer program product which comprises

of a computer-readable medium; and a Analysis Module stored on the computer-

readable medium, the Analysis Module receiving a first data stream at a computer, the

first data stream comprising packets of data packetized according to a packet protocol,

the Analysis Module segmenting the first data stream into segments according to a

Service Level Agreement, the Service Level Agreement being an agreement defining

parameters for communications service for the subscriber, the Analysis Module

dispersing at least one segment via a network for a subsequent processing service, the

Analysis Module receiving a result of the processing service, the Analysis Module

assembling a second data stream, the second data stream comprising at least one of i) the result of the processing service and ii) another segment, the Analysis Module communicating the second data stream via the network. And the **Claim 12** of copending Application No. **10/720586** recites a computer program product which comprises of a computer-readable medium; and a Analysis module stored on the computer-readable medium, the Analysis module receiving a first data stream at a computer, the first data stream comprising packets of data packetized according to a packet protocol, the Analysis module segmenting the first data stream into segments according to a set of subscriber-specified rules stored in memory, the set of subscriber-specified rules specified by a subscriber to a subscription service, the set of subscriber-specified rules specifying how electronic data is formatted for the subscriber, the Analysis module dispersing at least one'segment via a network for a subsequent processing service, the Analysis module receiving a result of the processing service, the Analysis module assembling a second data stream, the second data stream comprising at least one of i) the result of the processing service and ii) another segment, the Analysis module communicating the second data stream via the network.

In comparison of both the claims, one can see that **claim 16** of **10/720,800** is a broader version of **claim 12** of **10/720,586**. Since, Omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. In re KARLSON (CCPA) 136 USPQ 184 (1963), the claims are not patentably distinct.

Conclusion

Any response to this Office Action should be **faxed to** (571) 273-8300 **or mailed to**:

> Commissioner for Patents
> P.O. Box 1450
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Hand-delivered responses should be brought to

> Customer Service Window
> Randolph Building
> 401 Dulany Street
> Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Anish Sikri whose telephone number is (571) 270-1783. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Pérez-Gutiérrez can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you
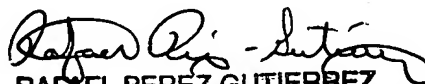
have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist/customer service whose telephone

number is (571) 272-2600.

Anish Sikri
A.S./a.s.

January 4, 2007

RAFAEL PEREZ-GUTIERREZ
SUPERVISORY PATENT EXAMINER
1/19/07